

*Registry's translation,  
the French  
text alone  
being authoritative.*

**105th Session**

**Judgment No. 2747**

The Administrative Tribunal,

Considering the complaint filed by Mr A. J. against the Universal Postal Union (UPU) on 19 March 2007 and corrected on 4 June, the UPU's reply of 31 August, the complainant's rejoinder of 8 October, the Union's surrejoinder of 14 December 2007, the complainant's additional submissions of 23 January 2008 and the UPU's final comments of 26 February 2008;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a Norwegian national born in 1948, joined the International Bureau of the UPU on 27 July 1987 as a First Secretary at grade P 3. He held the grade P 4 positions of Assistant Counsellor and Assistant Manager in various sections between 1991 and 2001. After a reorganisation of the Bureau he was appointed Manager of the Programme "Regulatory Affairs". On 1 September 2001 he was promoted to the position Manager of the Programme "Postal Economics", at grade P 5, in the Economic and Regulatory Affairs Directorate.

In 2004 the Congress, the Union's supreme body, adopted a new world strategy in response to a changing postal environment and the Union's missions were modified accordingly. In this context the Programme "Postal Economics" was abolished and two programmes were launched: the Programme "Economic Affairs" and the Programme "Acts of the Union". The Director General considered that the complainant should be transferred to the post of coordinator of the latter programme; a post which was subsequently classified at grade P 5. The complainant objected to this transfer during a meeting with the Director General. On 6 June 2006 he challenged the transfer in writing, implying that it would be tantamount to a disguised disciplinary measure. By a letter of 8 June the Director General confirmed the creation of the post and his plan to transfer the complainant to it with effect from 1 August, whilst emphasising that the reason for this transfer was to assign the complainant to duties of strategic importance, which called for his exceptional abilities in the field in question. By an internal memorandum of the same date the Director General officially announced his decisions regarding the restructuring of the International Bureau, transfers and calls for applications for certain posts.

On 5 July 2006 the complainant asked the Director General to review the transfer decision. On 10 July he applied for the post of Coordinator of the Programme "Economic Affairs". By a letter of 3 August the Director General confirmed the transfer. The complainant filed an appeal against this decision with the Joint Appeals Committee, in which he argued in particular that the transfer constituted an undeserved demotion. In its report of 13 December 2006 the Committee recommended that the Director General should maintain his decision to transfer the complainant. The Director General decided on 18 December 2006 to follow the Committee's recommendation. That is the decision impugned in this complaint. Since the complainant initially challenged three decisions in the same complaint, the Office of the Registrar requested that he file three separate complaints. The second complaint concerns the decision of 1 February 2007 not to appoint him to the post of Economic Affairs Coordinator, the "post he was holding" and which had been advertised. The third complaint relates to a decision of 11 January 2007 no longer to allow him to deputise for the Director of Economic and Regulatory Affairs at Management Board meetings.

B. The complainant alleges that the regulations governing the creation of posts have been violated. Indeed, under Regulation 2.2 of the Staff Regulations of the International Bureau of the UPU the creation and abolition of posts must be decided by the Council of Administration on the basis of proposals by the Director General.

Proposals and documents relating thereto must be submitted six weeks before the opening of the Council's session. Moreover, Article 102.6.15 of the General Regulations of the UPU states that the Council may "create or abolish [...] posts taking into account the restrictions imposed by the expenditure ceiling fixed". According to the complainant, the decision to create the post of Acts of the Union Coordinator was never submitted to the Council before being taken by the Director General, contrary to the Union's practice and to the letter of the Regulations. Nor was it submitted to the Council for ratification, as the UPU submits. With regard to the Union's position that the Director General may create posts without the prior consent of the Council of Administration provided that the staff complement does not change or exceed the level approved by the Council, the complainant asserts that the decision to create the new post did alter the complement.

He further alleges that the impugned decision constitutes an abuse of authority demonstrating a determination to sideline him. He comments that the post to which he was transferred entailed no new duties, but rather purely routine work inconsistent with his former level of responsibility. He takes the Director General and the Joint Appeals Committee to task for not having examined this issue, despite the fact that he raised it on numerous occasions. In his opinion, they therefore neglected their obligation to state the reasons for their decisions and caused a denial of justice, given that "the right to perform work at a level of responsibility consonant with the post to which the person has been appointed" is inherently guaranteed in the international civil service. The complainant further emphasises that the transfer was proposed to him before the new post had been submitted to the external classifier, who did not present his report until 10 August 2006, by which time the transfer dispute had already given rise to decisions by the Director General.

The complainant submits that the decision to transfer him has excluded him from participating in important activities which he carried out carefully and competently for many years to everyone's satisfaction. He comments that it was not until 2005 that some tension became apparent with the arrival of the new Director General and the adoption of certain reorganisation measures to which he was opposed. He contends that the Director General displayed bad faith in trying to justify his transfer by saying that his appointment was due to his "unique and very valuable" abilities.

The complainant asks the Tribunal to quash the decision of 18 December 2006 and to order the UPU to disclose his full personal file. He claims moral damages in the amount of 10,000 Swiss francs and a further 10,000 francs in costs.

C. In its reply the UPU challenges the receivability of the complaint inasmuch as the complainant altered the amount of damages he is claiming when he corrected his submissions. The Union notes that the complainant has presented a brief which is common to the three complaints which he filed together and it infers from this that he would like them to be joined. It states its objection to this.

The Union stresses that the Director General had objective and sound reasons for transferring the complainant, since this transfer formed part of a more general restructuring. In this context, it cannot be interpreted as a disguised disciplinary measure, because the complainant has not been accused of any professional misconduct and his qualities are fully recognised.

It argues that the Director General acted perfectly transparently and in compliance with the Union's regulations. The UPU refers to Staff Regulations 1.2 and 4.8, paragraph 2, which confirm the Director General's power with regard to appointments and assignments in general and the transfer and promotion of officials when a post falls vacant. According to the Union's practice, these powers apply to posts which have become vacant as well as to newly created posts. Moreover, the Director General has the authority to create new posts. Staff Regulation 2.2 and Article 102.6.15 of the General Regulations, on which the complainant bases his submissions, concern the distribution of power between the Council of Administration and the Director General. They are therefore organisational provisions which do not even have any indirect bearing on the rights and obligations of officials who may be transferred or promoted to newly created posts. According to the defendant, the above-mentioned article must be read in the light of Article 112.1 of the General Regulations, which states that the "Director-General shall organize, administer and direct the International Bureau". This power of organisation includes that of creating new posts. According to the UPU, what matters is that the maximum number of posts approved by the Council of Administration should not be exceeded. The interpretation of Article 102.6.15 of the General Regulations and of Staff Regulation 2.2, as well as practice relating thereto, have developed along these lines without being in contradiction with the existing regulations. Consequently, the maximum number of posts is submitted to the Council of Administration when the budget is approved, and the Director General is responsible for adjusting duties

and grouping existing functions according to organisational needs.

The UPU submits that in the instant case the Council of Administration was informed of the measures adopted by the Director General and that, by taking note of them without expressing any reservations, it ratified them, thereby recognising the Director General's power to abolish and create posts before it reaches a final decision. Had there been a formal flaw, it would have been remedied by the competent body's approval of the creation of the post in question.

The Union states that the strategic and political nature of the post was explained to the complainant several times and that no abuse of authority occurred in assigning him to his duties. Moreover, it stresses that the complainant's satisfactory performance in his former post did not entitle him to keep it forever. It also emphasises that the external classifier's evaluation confirmed that the complainant's former post and that to which he was transferred were at an equivalent level of responsibility, since both carry the same grade. In the opinion of the UPU, the fact that no account is taken of an official's preferences regarding the duties assigned to him does not constitute a violation of his dignity.

D. In his rejoinder the complainant explains that he is claiming an overall sum of 10,000 Swiss francs for moral damages and 10,000 francs as costs for his three complaints before the Tribunal which, if the Tribunal does not join them, works out at 3,333.30 francs in damages and the same amount in costs for each case.

He insists that his transfer is tantamount to demotion, since the duties attached to the post to which he has been transferred are the least interesting functions he performed in the past, and this post was classed as a P 3 in 1998 and 1999. He is of the opinion that the argument that his transfer was essential owing to the extent of his knowledge and experience is all the more absurd for the fact that he was informed that the Director General required his retirement at the prescribed date of 30 June 2008, contrary to the "oral assurances" he had been given and to the UPU's practice of retaining officials who have reached retirement age. The complainant again criticises the lawfulness of the way in which the new post was created. He points out that the Union has not produced a single document in support of its assertion that the creation of the post was ratified by the Council of Administration.

E. In its surrejoinder the UPU maintains its position. It emphasises that the post of Acts of the Union Coordinator underwent a formal classification process which should be compared with the complainant's highly subjective and personal allegations as to the level of interest and responsibility of the post. It draws attention to the complainant's bad faith. The Union maintains its position on the lawfulness of the manner in which the post was created and refers, by way of example, to an internal auditor's post which was created by the Director General before the Council of Administration was informed. The latter expressed no objections. The UPU produces evidence to refute the complainant's allegation concerning the increase in the staff complement and affirms that it has already supplied proof that the Council of Administration was informed about the creation of the post. It produces a further item of evidence to this end.

The Union denies what it considers to be the complainant's inaccurate and groundless allegations that he had received "oral assurances" that the date of his retirement would be deferred. Moreover it emphasises that there is no common practice in this respect, since such deferral is granted in very few cases.

F. In his additional submissions the complainant denounces the "wrong/misleading" information contained in the surrejoinder. In particular, he considers that the example of the internal auditor post is irrelevant. He asserts that he has not displayed bad faith, because he has always maintained that the post created did not merit a P 5 grade. Lastly, the complainant provides examples in support of his contention that the practice of deferring retirement beyond the statutory date is a "very long tradition".

G. In its final comments the UPU maintains its arguments. It denies that there is a "long tradition" of deferring retirement and stresses that it cannot be inferred from the examples given by the complainant that any precedent exists.

## CONSIDERATIONS

1. The complainant joined the UPU in 1987 as a First Secretary at grade P 3. He subsequently held the grade

P 4 posts of Assistant Counsellor and Assistant Manager in various sections. After a reorganisation the complainant was appointed Regulatory Affairs Programme Manager at the same grade. On 1 September 2001 he was promoted to the position of Postal Economics Programme Manager, at grade P 5, in the Economic and Regulatory Affairs Directorate.

2. In 2006 structural adjustments at the UPU's International Bureau led to the restructuring of the aforementioned Directorate and the creation of an Acts of the Union Programme and an Economic Affairs Programme, the latter replacing the Postal Economics Programme. Each of the new programmes was headed by a coordinator at grade P 5. The complainant was transferred to the post of Acts of the Union Coordinator, whereas applications were invited for the post of Economic Affairs Coordinator.

3. On 5 July 2006 the complainant asked the Director General to review his decision to transfer him. As this request was turned down, he filed an appeal with the Joint Appeals Committee. In its report of 13 December 2006 the Committee recommended that the Director General should "maintain his decision to transfer the [complainant] to the post of Acts of the Union Coordinator". Following this recommendation, the Director General notified the complainant by a letter of 18 December 2006 that he maintained his transfer.

4. In the meantime the complainant had applied for the post of Economic Affairs Coordinator. Having been informed that his application had been rejected, he asked the Director General to review this decision. The Director General refused to do so. On 3 November 2006 the complainant filed an appeal against this refusal with the Joint Appeals Committee. In its report of 18 December 2006 the Committee recommended that the Director General should maintain his decision. The Director General informed the complainant in a letter of 1 February 2007 that he had decided to follow the Committee's recommendation and to maintain the appointment of another official to this post.

5. In addition the complainant wrote to the Director General on 22 December 2006 asking him to "review the decision taken by [him] or by one of [his] subordinates to invite [the Economic Affairs Coordinator] to Management Board meetings when [the Director of Economic and Regulatory Affairs] is absent". The Director General replied on 11 January 2007 that what he was challenging was not an administrative decision. On 12 January 2007 the complainant filed an appeal against this decision with the Joint Appeals Committee. As the latter failed to take a decision within sixty days, the complainant considered that he was entitled to file a complaint with the Tribunal in accordance with Article VII, paragraph 3, of its Statute.

6. The complainant initially filed one complaint with the Tribunal, in which he impugned the three decisions of 18 December 2006, 11 January and 1 February 2007. The Registrar asked him to file three separate complaints, which he did on 19 March 2007, but with the same brief in support of his three complaints. He asked that the three complaints be joined because the three contested decisions are closely connected, were taken in the same factual context and raise similar legal issues.

7. The defendant is opposed to the joinder of proceedings. It points out that joinder is justified only if the proceedings relate to the same issues of fact and raise the same issues of law, in accordance with the Tribunal's case law (see Judgment 1541).

8. The Tribunal considers that while the context is the same, the facts are not identical. The first proceedings ensue from a disputed transfer, the second are in response to the rejection of a candidature and the third have arisen because the complainant was not designated as the substitute for his supervisor at Management Board meetings. Moreover separate decisions were taken after three internal appeals and the issues of law are not the same. It is therefore not appropriate to join the three complaints; they will consequently be examined separately.

9. Here consideration will be given to the complaint in which the complainant impugns the Director General's decision of 18 December 2006 confirming the decision to transfer him to the post of Acts of the Union Coordinator. The complainant's claims are set forth under B above.

10. The request that the complainant's full personal file be produced must be refused, since the Tribunal "has consistently held that it will not order the production of documents on the speculative basis that something might be found to further the complainant's case" (see Judgment 2510, under 7).

11. The Tribunal identifies two pleas in support of the complaint, to wit that the Director General was not

empowered to create a new post and that the decision to transfer the complainant to the post of Acts of the Union Coordinator was flawed by an abuse of authority.

The complainant's first contention, based on the regulations, is that the provisions governing the abolition/creation of posts in the organisation were violated in that the Director General took the decision to create the post of Acts of the Union Coordinator on his own without consulting the Council of Administration. In this connection he draws attention to Staff Regulation 2.2, which provides that "[t]he creation and abolition of posts shall be decided by the Council of Administration on the basis of such proposals by the Director General" and that "[p]roposals and documents relating thereto must be submitted six weeks before the opening of the Council of Administration session". He adds that Article 102.6 of the General Regulations, which lists the functions of the Council of Administration, states that it may "create or abolish International Bureau posts taking into account the restrictions imposed by the expenditure ceiling fixed", and that Article 112.1 of the Regulations stipulates that the Director General "shall organize, administer and direct the International Bureau".

He considers that the Director General's power of organisation does not include the possibility of deciding on or altering posts. In his opinion this is clear from the letter of the regulations relating to the distribution of powers between the Council of Administration and the Director General. The complainant further states that, in practice, several Council of Administration decisions concerning the abolition or creation of posts were published in the period between 1995 and 1998. He submits that the decision to create a post of Acts of the Union Coordinator was never submitted to the Council of Administration either before or after it was taken by the Director General and published on 8 June 2006.

With reference to the Union's contention that the Director General may create posts without the prior consent of the Council of Administration provided that the staff complement does not change or exceed the level approved by the Council, the complainant adds that a perusal of the International Bureau's organisation charts provides convincing evidence that the Director General's decision to create the post of Acts of the Union Coordinator did in fact alter the complement.

12. The defendant replies that the decision to create the aforementioned post is not flawed in any way. It submits that the Director General's power to organise the International Bureau enables him to create and abolish posts, provided that this is done within the ceiling approved by the Council of Administration. It refers, by way of example, to a grade P 5 internal auditor post created in 2004, which had previously been a short-term consultant's post funded from a budget separate from that of the organisation. The Council of Administration, which was subsequently informed of this decision, did not raise any objection. It further submits that the restructuring in 2005 and 2006 did not entail any increase in the total number of posts, since it was designed to keep within the ceiling approved by the Council of Administration.

It states that the Council of Administration was informed of the creation of the post of Acts of the Union Coordinator in 2006, as is confirmed by an item of evidence annexed to the surrejoinder.

It comments that Article 102.6.15 of the General Regulations and Staff Regulation 2.2 concern only relations between the Council of Administration and the Director General; that the fact that the latter provision is to be found in the Staff Regulations does not contradict this finding; and that, on the contrary, "the second sentence of this provision, stipulating that 'proposals and documents relating thereto must be submitted six weeks before the opening of the Council of Administration session', demonstrates quite clearly that the purpose of this provision is to clarify relations between the Council of Administration and the Director General".

13. The case law establishes that "an international organisation necessarily has power to restructure some or all of its departments or units, including by the abolition of posts, the creation of new posts and the redeployment of staff [...] and decisions on [these matters] are discretionary and subject to limited review" (see Judgment 2510, under 10). In the instant case, the post of Acts of the Union Coordinator was created in the context of the restructuring of the Union in response to instructions from the 2004 Congress. The only issue which therefore arises is whether the creation of the said post was carried out in a manner which complied with the provisions in force.

14. With regard to this question, the Tribunal notes first that the complainant is entitled to rely on all the provisions of the General Regulations and Staff Regulations, including those which primarily concern relations between the Council of Administration and the Director General insofar as a breach of these provisions may affect his personal situation.

The Tribunal observes that under the above-mentioned Staff Regulation 2.2 and Article 102.6 of the General Regulations, concerning the functions of the Council of Administration, the Council of Administration has sole competence for the creation and abolition of posts, even though Article 112.1 of the General Regulations provides that the Director General “shall organize, administer and direct the International Bureau”.

Hence, in the absence of provisions authorising the Director General to adopt a temporary decision on the creation or abolition of a post pending the ratification of this decision by the Council of Administration, he did not have the power to create the post of Acts of the Union Coordinator. The decision to transfer the complainant to that unlawfully created post was therefore unlawful. The fact that the creation of the post in question was subsequently ratified by the Council of Administration does not remedy the flaw affecting this decision, the lawfulness of which must be appraised as at the date of its adoption.

15. It may be concluded from the above that the impugned decision must be quashed, without there being any need to examine the merits of the complainant’s other plea.

16. The complainant claims moral damages in the amount of 3,333.30 Swiss francs in the event that no joinder of proceedings is ordered. The Tribunal considers that it is fair to award him the sum of 3,000 francs.

17. The complainant is entitled to costs, which the Tribunal sets at 3,000 francs.

## DECISION

For the above reasons,

1. The impugned decision is quashed.
2. The UPU shall pay the complainant the sum of 3,000 Swiss francs in compensation for the moral injury suffered.
3. It shall also pay him costs in the amount of 3,000 francs.

In witness of this judgment, adopted on 8 May 2008, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet

